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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/569,515	02/19/2007	Jean-Paul Denisart	112701-710	9686
29157	7590	03/30/2010	EXAMINER	
K&L Gates LLP			ALEXANDER, REGINALD	
P.O. Box 1135				
CHICAGO, IL 60690				
			ART UNIT	PAPER NUMBER
			3742	
			NOTIFICATION DATE	DELIVERY MODE
			03/30/2010	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

chicago.patents@klgates.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/569,515	<b>Applicant(s)</b> DENISART ET AL.	
	<b>Examiner</b> Reginald L. Alexander	<b>Art Unit</b> 3742	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 08 January 2010.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-3, 5, 9, 10, 12, 15, 17-19 and 21-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 23-28 is/are allowed.
- 6) ☒ Claim(s) 1-3, 5, 9, 10, 12, 15, 17-19, 21 and 22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                    | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Drawings***

The subject matter of this application admits of illustration by a drawing to facilitate understanding of the invention. Applicant is required to furnish a drawing under 37 CFR 1.81(c). No new matter may be introduced in the required drawing. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d).

While applicant contends that the office has the drawings, it is recommended that they be supplied once more. There is no indication of drawings in the application at this time.

### ***Claim Objections***

Claims 15, 17 and 29 are objected to because of the following informalities: The method claims merely inferentially claim an actual step of wetting. The claims should positively recite the method steps and not use language such as "arranged so as to". Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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Claims 1-3, 5, 9 and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Shaw et al.

There is disclosed in Shaw a device for preparing a beverage from a food substance contained in a capsule 2, the device comprising a housing 4, 5 for receiving the capsule, a piercing and injection element 7 having a channel for receiving liquid under pressure, the piercing and injection element projecting into the housing and piercing a face of the capsule, the piercing and injection element having a distal end arranged in the form of a valve having a closure means 8, the valve being designed to close off the channel in a first position and to open under the effect of the pressure from the liquid against the elastic closure member and to create a layer of liquid sprayed through the channel in a second position.

In regards to claim 2 it is apparent that spray would be in multiple directions once it was discharged from a distal end opening of the piercing and injection member. Such would be the case since the opening is angled.

In regards to the thickness of the liquid layer, it is apparent that at some point the injection device of Shaw could produce a layer of the claimed thickness.

Claims 10, 12, 15, 17-19 and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by Hale.

There is disclosed in Hale a device for preparing a beverage from a food substances contained in a capsule 200, the device comprising a housing 20 for receiving the capsule, a piercing and injection element 58 having a channel 59 for receiving a liquid under pressure, the piercing and injection element projecting into the

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housing and piercing a face of the capsule, the piercing and injection element having slots 62 that are transverse to the piercing and injection element, the slots being arranged so as to inject the liquid into the capsule in the form of a thin layer extending in a continuous, divergent and multidirectional manner, Covering a spray surface in an arc of a circle.

***Allowable Subject Matter***

Claims 23-28 are allowed.

***Response to Arguments***

Applicant's arguments filed 08 January 2010 have been fully considered but they are not persuasive.

Applicant states that the Shaw reference fails to disclose "a distal end arranged in the form of a valve having a closure means with an end, the valve being designed to close off the channel in a first position and to open under the effect of the pressure from the liquid against an elastic element so as to free a passage as a function of the pressure and thus create a layer of liquid sprayed through the passage in a second position".

Applicant goes on to state that in Shaw the valve effect is a result of interaction between the liquid injector tube and the sachet film material, and is only present when the injector tube has pierced the sachet and only for as long as the injector is in contact with the sachet.

While Shaw may operate in this manner, it does not prevent the structural limitations of the claims from being met. A valve arrangement is formed at a distal end

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of the Shaw injection element when a portion 8 of the sachet film material is in contact with the injector tube. The valve arrangement opening when pressure from liquid in the

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

channel presses against the portion 8. The claims make no limitation as to how the valve is formed or at what position within or out of the sachet the valve arrangement is formed. Thus, while the arrangement of Shaw fails to solve the problems discussed by Applicant, it does however meet the structural limitations set forth in the claims.

Applicant argues that the Hale reference fails to disclose injected spray in the form of at least one thin layer extending in a continuous, divergent and multidirectional manner, covering a spray surface in an arc of a circle as required in the claims.

A view of Hale discloses a slots (channel) 62 that extend over half the diameter of the injection element. This arrangement would cause a spray that is within the

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claimed spray surface arc range. In regards to the spray taking on a thin layer, there is nothing in the phrase "thin layer" which defines a set thickness. The arc of the Hale spray would cause a layer to be formed as it passes through the slots. This layer could be considered to be a "thin layer".

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Reginald L. Alexander whose telephone number is 571-272-1395. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tu Hoang can be reached on 571-272-4780. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Reginald L. Alexander/  
Primary Examiner  
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